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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KATHY JAHNS,

Civil Action No.

Plaintiff,

COMPLAINT

-against-

Jury Trial Demanded

PHYLLIS CAVALIERE, MICHAEL BARATOFF,
and GEMINI COMMUNICATIONS, INC.

Defendants.

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Plaintiff, Kathy Jahns (“Jahns”), by her undersigned attorneys, as and for her complaint against defendants Phyllis Cavaliere (“Cavaliere”), Michael Baratoff (“Baratoff”), and Gemini Communications, Inc. (“Gemini,” and together with Cavaliere and Baratoff, the “Defendants”) alleges as follows:

INTRODUCTION

1. This is a case of failure to pay wages in violation of the California Wage Theft Prevention Act, the New York Wage Theft Prevention Act, the Fair Labor Standards Act, common law breach of contract, unjust enrichment and conversion.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this dispute pursuant to 28 U.S.C. § 1332(a)(1), in that Jahns is a citizen of the State of California and Defendants are

citizens of the State of New York, and the amount in controversy exceeds the sum of \$75,000 in amount and value.

3. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b) and (c) in that at least one Defendant resides in this District and the acts and conduct complained of herein occurred in substantial part in this District.

PARTIES

4. Plaintiff Jahns is an individual residing in Hermosa Beach, California.

5. Upon information and belief, non-party Metro Newspaper Advertising, Inc. (“Metro”) is a corporation formed under the laws of the State of New York. Metro was a national newspaper planning and buying agency which serviced national advertisers in both traditional print and digital newspaper platforms. On March 27, 2017 (the “Petition Date”), Metro filed a voluntary petition for relief under chapter 11 of title 11, United States Code, as amended (11 U.S.C. §§ 101 et. seq.) in the United States Bankruptcy Court for the Southern District of New York, Case No. 17-22445 (RDD).

6. Upon information and belief, defendant Cavaliere is the Chairman and Chief Executive Officer of Metro and maintains a residence at 148 Van Cortland Park Avenue, Yonkers, New York.

7. Upon information and belief, defendant Baratoff is the President of Metro and maintains a residence at 322 West 57th Street, New York, New York.

8. Upon information and belief, defendant Gemini is the parent company of Metro and maintains an office at 28 Wells Avenue, Building 3, 4th Floor, Yonkers, New York 10701.

FACTUAL ALLEGATIONS

9. From approximately October 27, 2008 through April 5, 2017, Jahns was employed by non-party Metro as an account manager for the Western Sales Region pursuant to a written offer of employment dated October 10, 2008. Jahns's remuneration included a base salary and sales commissions plus reimbursement of expenses.

10. On Schedule E/F of its bankruptcy schedules, Metro admitted that as of the Petition Date, Jahns was owed \$152,976.56 (the "Unpaid Wages") in unpaid sales commissions of which \$12,850.00 was entitled to priority pursuant to 11 U.S.C. § 507(a)(4).

11. The unpaid wages accrued in the period from May 2014 to September 2016.

12. The Unpaid Wages remain unpaid, Metro has ceased operations and Jahns is no longer employed by Metro.

FIRST CAUSE OF ACTION

13. Plaintiff repeats and realleges each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

14. Plaintiff is a covered person under the California Wage Theft Prevention Act, as amended (the "CWTPA").

15. Defendants are covered persons liable for violations of the CWTPA by Metro and Gemini and individually.

16. Plaintiff has been damaged by Defendants' violation of the CWTPA in an amount not less than \$152,000.00.

17. Under the CWTPA, Plaintiff is further entitled to liquidated damages, attorneys' fees and costs.

SECOND CAUSE OF ACTION

18. Plaintiff repeats and realleges each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

19. Plaintiff is a covered person under the New York Wage Theft Prevention Act (the “NYWTPA”).

20. Defendants are covered persons liable for violations of the NYWTPA by Metro and Gemini and individually.

21. Plaintiff has been damaged by Defendants’ violation of the NYWTPA in an amount not less than \$152,000.00.

22. Under the NYWTPA, Plaintiff is further entitled to liquidated damages, attorneys’ fees and costs.

THIRD CAUSE OF ACTION

23. Plaintiff repeats and realleges each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

24. Plaintiff is a covered person under the Fair Labor Standards Act, as amended (the “FLSA”).

25. Defendants are covered persons liable for violations of the FLSA by Metro and Gemini and individually.

26. Plaintiff has been damaged by Defendants’ violation of the FLSA in an amount not less than \$152,000.00.

27. Under the FLSA, Plaintiff is further entitled to liquidated damages, attorneys’ fees, interest and costs.

FOURTH CAUSE OF ACTION

28. Plaintiff repeats and realleges each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

29. Plaintiff provided value to Defendants by rendering her services as a sales person for the Defendants.

30. Defendants benefited from the services rendered by Plaintiff.

31. Plaintiff has been damaged by Defendants, who were unjustly enriched by Plaintiff's services for which they have deliberately refused compensation, in an amount not less than \$152,000.00.

32. Plaintiff is further entitled to attorneys' fees, interest and costs.

FIFTH CAUSE OF ACTION

33. Plaintiff repeats and realleges each and every allegation set forth in the proceeding paragraphs as if fully set forth herein.

34. Plaintiff provided value to Defendants by rendering her services as a sales person for the Defendants.

35. Plaintiff earned payment in the amount of at least \$152,000 from Defendants.

36. Rather than pay Plaintiff the amounts she is owed, Defendants converted Plaintiff's funds to their own use.

37. Plaintiff has been damaged by Defendants' conversion of her monies in an amount not less than \$152,000.00.

38. Plaintiff is further entitled to liquidated damages, attorneys' fees, interest and costs.

WHEREFORE, Plaintiff Kathy Jahns requests judgment against Defendants, Phyllis Cavaliere, Michael Barattoff, and Gemini Communications, Inc. as follows:

- A. An award of compensatory damages against Defendants, jointly and severally, in an amount to be determined at trial, together with interest;
- B. An award of costs, disbursements and attorney's fees to the fullest extent permitted by law; and
- C. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

39. Plaintiff, Kathy Jahns, as provided by Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury in the above-captioned matter.

Dated: November 21, 2017

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